IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 22654 of 2007(V)

AGAINST THE ORDER IN EA 46/2007 IN EP.70/2004 of MUNSIFF COURT, PAYYANNUR
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PETITIONER:

N.BALAN,AGED 64 YEARS,
S/O.KUNHIRAMAN,NEAR GOVERNMENT HOSPITAL,
PAYYANNUR.

BY ADV. SRI.T.M.CHANDRAN
SRI.JOSEPH ALBIN NEDUNTHALLY

RESPONDENT:

INDIAN OVERSEAS BANK,
MANAGER PAYYANNUR BRANCH,PAYYANNUR.

BY ADV. SRI.P.B.SURESH KUMAR, SC,I.O.BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 22654 OF 2007

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Dated this the 24th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order passed by the learned Munsiff, Payyannur in E.A.46/07 in E.P.70/04. The plaintiff obtained a decree for realisation of the amount and the Court found that the judgment debtor has means to pay and therefore ordered arrest. A writ petition was preferred against the said order and it was not pressed. Later this application is filed holding that there is change of circumstances and therefore he has no means to pay and so the execution petition should be dismissed. The Court below was of the opinion that as the words used in Section 51 of CPC is 'has had the means to pay' it held that when once the means of the judgment debtor is proved it need not be proved again and again and therefore ordered arrest.

2. Now, the learned counsel for the writ petitioner very strongly canvases before me in the light of the decision reported in ***Jolly George Varghese v. Bank of Cochin (1980 KLT 375)*** to the effect that, it is not a correct proposition of law to be followed. He has specifically referred to paragraph 11 of the judgment wherein it is held, "This is not a sound position, apart from being inhuman going by the standards of Article 11(of the Covenant) and Article 21(of the Constitution). The learned counsel also cited before me other decisions as well. So, in the light of the judgment of the Apex Court, the matter requires consideration at the hands of the Court below on factual matrix. Suppose there is absolutely no change of circumstances after the finding of no means, then this question may not be of great importance. But, if there is change of circumstances and it has become impossible for him to pay the amount on account of the changed circumstances, one cannot force him to pay the amount. Since the matter has not been considered in he above angle, I set aside the order under challenge and the

matter is remitted back to the Court below to consider the question afresh in the light of the authoritative pronouncement of the Apex Court as well as of this Court and by permitting the parties to adduce evidence in support of their respective contentions and decide the matter in accordance with law. Parties are directed to appear before the Court below on 23.8.07 and the Court below shall dispose of the matter within a period of three months from the date of first appearance of the parties.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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